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"allotted by the High Court Legal Services Committee"

समक्ष माननीय उच्च न्यायालय जबलपुर, (म0प्र0)

दा0 अपील क्रमांक 1654 / 99

अपीलार्थी - ब्रम्हाराम जागड़े आ0 स्व0 रामादीन जागड़े
आयु 24 वर्ष सा0 ग्राम ईरागांव

विरुद्ध

प्रत्यर्थी - मध्य प्रदेश शासन

सत्र प्रकरण क्रमांक 133/98 म0प्र0 शासन विरुद्ध ब्राम्हाराम जागड़े में श्रीमान् अनिल वर्मा, द्वितीय अपर सत्र न्यायाधीश राजनांदगांव द्वारा भा0दं0वि0 की धारा 302, 201 एवं 203 के अधीन दण्डनीय अपराध के विरुद्ध दिनांक 19.2.99 से उत्पन्न.

अपील अंतर्गत धारा 374 दण्ड प्रक्रिया संहिता ।

6327
21/6/99

Learned Legal Aid Petition With Annexures
21/6

CLERK
O/o. Advocate General
M. P. JABALPUR

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DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1654 of 1999

Appellant : Brahmram Jagde

Vs.

Respondent : State of Madhya Pradesh

Smt. Savita Tiwari, learned counsel for the appellant.

Shri U.N.S.Deo, learned G.A. with Shri M.P.S. Bhatia learned P.L. for the respondent/State.

ORAL JUDGMENT

(16.02.2006)

Per L.C. Bhadoo, J

The accused/appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure questioning the legality and correctness of the judgment of conviction and order of sentence dated 19.02.1999 passed by the II Additional Sessions Judge, Rajnandgaon in Sessions Trial No. 133/98 whereby learned II Additional Sessions Judge after holding the accused/appellant guilty for commission of the offences under sections 302, 201 and 203 of the IPC sentenced him to undergo imprisonment for life with fine of Rs.500/- u/s 302 of the IPC, two years' RI

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with fine of Rs.1,000/- u/s 201 of the IPC and one year's R.I. u/s 203 of the IPC. All the substantive sentences were directed to run concurrently

2. Case of the prosecution, in brief, is that accused/appellant Brahmaram Jagde gave merg intimation (P-13) on 12.06.98 at about 10.00 a.m. in the police station Maanpur to the effect that he is resident of village Iragaon, Jamila Bai was married to him 4-5 years back and there are two children out of the wedlock, he along with his wife Jaimla Bai (since deceased), children and his mother are residing in his house, a day before thereto at about 6.00 p.m. he returned to his house and after taking dinner all of them went to sleep, he was sleeping outside the house whereas his wife Jamila Bai was sleeping inside the house along with children. He woke up at about 5-6.00 a.m., went inside the house and saw that his wife was hanging with the help of nylon rope which is used for taking out water from the well. One end of the rope was tied to the wooden beam of the roof whereas the other end was tied round the neck of Jamila Bai. He apprised his mother about the incident and he along with his mother after loosening the rope started massaging Jamila Bai but by that time Jamila Bai was already dead. Thereafter, he informed Choukidar and the villagers about the incident. On receiving this information the Station House Officer left for the scene of occurrence. The accused gave memorandum P-1 regarding his bloodstained cloth. In pursuance of the said memorandum one lungi and a T-shirt were recovered under P-9 at the instance of the accused. Site plan of the place of occurrence P-10 was prepared. Nylon rope and bloodstained and plain soil were taken into possession under P11. After giving notice P-6 to the Panchas,

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Panchanama of the body of Jamila Bai P-7 was prepared and the Panchas opined that Jamila Bai died on account of beating and asphyxia due to tying of rope round her neck. Thereafter, dead body was sent for postmortem examination to Community Health Centre, Maanpur where Dr. R.K.Katariya (P.W.3) conducted postmortem on the body of Jamila Bai and submitted his report P-2. The doctor by Ex.P-3 opined that cause of death is asphyxia due to strangulation and the death was homicidal in nature. Investigating officer also made a report P-4-A making an enquiry as to whether nylon rope in question can be used for the purpose of strangulation. Doctor gave his opinion P-4 that the seized rope can be used for strangulation. On the basis of the above report Shri Sanjay Dubey, SHO police station Maanpur registered a case under sections 302 and 201 of the IPC on 13.06.98. The bloodstained articles were sent to Forensic Science Laboratory, Raipur for chemical examination under P-15 and the report received from F.S.L., Raipur is P-16. After completion of the investigation charge sheet was filed against the accused for commission of the offences under Sections 302, 201 and 203 of the IPC in the Court of Judicial Magistrate First Class, Ambagarh Chouki who in turn committed the case to the Sessions Judge, Rajnandgaon from where learned II Additional Sessions Judge received the case on transfer for trial.

3. Learned Additional Sessions Judge after hearing the Additional Public Prosecutor and counsel for the accused/appellant and after perusal of the record, was of the opinion that prima facie offences under sections 302, 201 and 203 of the IPC were made out against the accused and thus

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he framed the charges against the accused under the aforesaid sections and the accused abjured his guilt.

4. Prosecution in order to establish charges against the accused/appellant has examined as many as 11 witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he admitted that he took Rs.500/- from his father-in-law for the purchase of ox. He has also admitted that on the previous day his mother-in-law had come to his house. He had informed about the incident to his father-in-law Nanduram. In reply to question No. 19 he stated that there was no injury on the body of Jamila Bai. Out of emotion he brought down the dead body of Jamila Bai when she was hanging. He informed Bhagwani (P.W.6) that Jamila Bai has committed suicide by hanging and stated that he is innocent and has been falsely implicated in the crime and Jamila Bai died on account of committing suicide by hanging herself.

5. Learned Additional Sessions Judge after hearing counsel for the parties has convicted and sentenced the appellant as mentioned in paragraph one of this judgment.

6. Learned counsel for the accused/appellant argued that the prosecution has failed to establish that there was any dispute regarding the return of money of Rs. 500/- to the father of the deceased, therefore, the accused assaulted her. The prosecution has not been able to connect the accused with the crime in question on the basis of other circumstantial evidence adduced by it. She further argued that even the doctor has

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stated that there was a ligature mark around the neck of Jamila Bai and the rope in question could be used for strangulation, therefore, when the deceased was found hanging with the help of a rope, the point raised by the accused cannot be disbelieved as he was sleeping outside the house.

7. On the other hand, learned counsel for the State supported the impugned judgment of the trial Court.

8. We have heard Smt. Savita Tiwari, learned counsel for the accused/appellant and Shri U.N.S.Deo with Shri M.P.S.Bhatia, learned counsel for the State.

9. The question which arises for determination by this Court is as to whether Jamila Bai died on account of committing suicide by hanging herself or the death of Jamila Bai was homicidal in nature and she died on account of strangulation by the accused? In this case there is no direct evidence against the accused/appellant and the whole case rests on the circumstantial evidence and in order to convict the accused on the basis of circumstantial evidence as per the settled law the prosecution has to satisfy the following tests;

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that

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with all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

10. In the light of the above law we have to scrutinize the evidence available on record. The prosecution has tried to establish the charges against the accused/appellant on the following grounds;

i) That the injuries found on the body of Jamila Bai were suggestive of beating and the doctor has opined that death was homicidal in nature.

ii) That bloodstained clothes of the accused were recovered at the instance of the appellant and blood was found on the lungi of the accused as per the report of the F.S.L., Raipur.

iii) That the accused was present in the house on the fateful night and there was no possibility of coming any third person in his house and commit the crime.

iv) That the accused made a false report in the police station Maanpur regarding commission of suicide by Jamila Bai which was contrary to the facts of the case and in doing so the conduct of the accused indicate the involvement of accused in the crime in question.

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v) That Rs. 5,000/- were advanced by the father of the deceased to the accused for purchasing ox.

11. As far as first circumstance is concerned, Dr. R.K. Katariya (P.W.3) has stated in his evidence that on 12.06.98 he was posted as Medical Officer at Community Health Station- Maanpur and on that day he conducted the postmortem on the body of the deceased Jamila Bai. He found that there was swelling on the right cheek, the upper teeth of right side was missing and there was a fresh socket on which clotted blood was present, premolar teeth of lower jaw was also missing and there was a fresh socket and swelling on the face and following injuries were found on the body of the deceased;

a) injury over the mandible region in the size of 1" x 1" in oval shape in black colour which was on the left side of mandible on dissection clotted blood was found.

b) Abrasion below the mandible ½' x ½' irregular in shape.

c) Injury over the right side of mandible in the size of 1 ' x 1'.

d) Abrasion on the left side of lip in the size of 1 ½ ' x 1 ½ ' .

e) Abrasion on the left side of nose in the size of ½' x ½ .

f) Abrasion above the left eye in the size of 1' x 1'.

g) Abrasion on the left arm near the shoulder.

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h) There was black mark below the chin, round the neck and behind the neck which was overlapping but both marks were not joint. On dissection clotted blood was found beneath the teeth.

i) Trachea and cervical vertebra were not fracture.

j) Injuries were ante mortem in nature and caused by hard and blunt object.

k) The marks which were found round the neck could be caused by rope.

12. Clothes of the deceased were given to the constable after postmortem examination and the postmortem report and the opinion of the doctor are P-2 and P-3 respectively. In the cross-examination of the doctor P.W.3 the defence has not been able to elicit any circumstance which make the statement of this witness unreliable, therefore, the injuries mentioned above were found on the body of the deceased Jamila Bai and the doctor has opined that the death was homicidal in nature. The rope in question could be used for strangulation. Thus, the above circumstance establishes the fact that so many injuries were found on the body of the deceased, even one upper and one lower teeth were found missing and there was fresh socket which shows that teeth were recently broken and clotted blood was also present. Therefore, the story put forth by the accused that Jamila Bai died on account of hanging stands belied by the injuries found on the body of the deceased which has not been explained by the accused and the doctor in paragraph 8 of his cross-examination has stated that it was not possible to receive all the injuries in a single

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assault. He has further stated that there was swelling on the face of the deceased Jamila Bai and all the injuries were ante mortem in nature and caused by hard and blunt object. The defence has not cross-examined this witness as to how it was possible to receive these injuries and how it was possible for the deceased to hang herself with the wooden beam of the roof of the house, therefore, in view of the above medical evidence we are of the considered opinion that the defence raised by the accused that deceased committed suicide by hanging does not appear to be correct looking to the above mentioned facts and reasoning.

13. As far the second circumstance is concerned, the accused himself gave memorandum of P-1 and in pursuance thereof the clothes of the accused were recovered at his instance under P-9 and that has been proved by PW 6 Bhagwani Ram who has stated that he was called by the police after giving notice P-6 and Panchanama of the body P-7 was prepared in his presence which bears his signature and the accused gave information to the police that lungi stained with blood was concealed by him in his house and he would get the same recovered. Thereafter, the accused brought the bloodstained lungi and same was taken into possession under P-9 and the memorandum of the accused P-1 bears his signature. In paragraph 8 of his cross-examination he has stated that accused gave the information in his presence that he had concealed the clothes in a box in his house and all the documents were prepared in his presence. Investigating officer P.W. 11 S.K.Dubey has also stated that accused gave memorandum P-1 that at the time of incident he was wearing lungi and the same had been concealed by him in a box in his

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house and he would get it recovered and ultimately the same was recovered under P-9. In view of this evidence recovery of bloodstained lungi at the instance of the accused from his house as per the report of F.S.L. P-16, is established.

14. As far as the third circumstance is concerned, it has not been denied by the accused himself that he was not present on the fateful night in his house. The only defence of the accused was that he was sleeping outside the house and his wife was sleeping inside. Even if this defence of the accused is taken to be true, the same does not absolve the accused from his involvement in the crime in question because it was possible to commit the crime by going inside the house and thereafter come back and sleep on the cot outside the house. There is no cross-examination of the prosecution witnesses or the investigating officer on the point that there was any possibility of coming any third person and commit the crime. Moreover, had any third person come inside the house and committed the crime, Jamila Bai received so many injuries even her teeth were found broken, and thus in the normal course she should have raised screams which would have made the accused and his mother aware of the incident, therefore, this circumstance that the accused was present in the house and injuries were received by the deceased as per the medical report and there was no possibility of coming any third person in the house and commit the crime establishes the involvement of the accused in the crime in question.

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15. As far as fourth circumstance is concerned, the accused/appellant very cleverly made a false report P-13 in the police station in which he mentioned that his wife died on account of committing suicide by hanging with the help of rope, as has already been discussed in point No. 1, the same has been found false as so many injuries were found on the body of Jamila Bai which have been proved by Dr. Katariya, therefore, the accused tried to disappearance of evidence for commission of crime with an intention to screen himself from legal punishment and knowing that he intentionally gave information to the police in respect of commission of the crime which he was knowing fully well that it was false and the raising of false plea speaks about the conduct of the accused that after committing the crime he made a false report which is admissible as per provisions of Section 8 of the Evidence Act and therefore, he has rightly been held guilty under Section 201 and 203 of the IPC.

16. As far as the fifth circumstance is concerned, even though it has been admitted by the accused that he received Rs. 500/- for purchasing the ox from his father-in-law namely Nanduram but there is no legal evidence on record that on account of receiving Rs. 500/- there was any dispute between the wife and husband or any quarrel took place between the two as a result of which the accused assaulted the deceased.

17. Thus we are of the considered opinion that the chain of circumstances discussed above is complete and unerringly establishes the involvement of the accused in the commission of the crime in question and there is no possibility of coming any third person in his house and

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commit the crime in question, therefore, the prosecution has been able to establish the crime against the accused on the basis of circumstantial evidence as per the law laid down by the Hon'ble Apex Court for convicting the accused/appellant for commission of the offences based on the circumstantial evidence.

18. Thus in view of above, there is no illegality or infirmity in the impugned judgment of the trial Court. The appeal being devoid of merits is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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